

FEDERAL HATCH ACT

5 U.S.C. § § 7321-7326; 5 C.F.R. Parts 733-734



Political Activity and the Federal Employee:

What every employee should know



Who is OSC?

OSC is an independent investigative and prosecutorial agency in the Executive Branch.

OSC'S MISSION



TO:

- **PROTECT CURRENT AND FORMER EMPLOYEES, AND APPLICANTS FOR FEDERAL EMPLOYMENT, ESPECIALLY WHISTLEBLOWERS, FROM PROHIBITED EMPLOYMENT PRACTICES, OR FROM ILLEGAL EMPLOYMENT PRACTICES UNDER THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)**
- **PROMOTE AND ENFORCE COMPLIANCE BY GOVERNMENT EMPLOYEES WITH HATCH ACT RESTRICTIONS ON POLITICAL ACTIVITY**
- **FACILITATE DISCLOSURES BY FEDERAL WHISTLEBLOWERS ABOUT GOVERNMENT WRONGDOING**

OSC'S MISSION (cont'd)



CARRIED OUT BY:

- **INVESTIGATING COMPLAINTS OF PROHIBITED PERSONNEL PRACTICES, ESPECIALLY REPRISAL FOR WHISTLEBLOWING, AND PURSUING REMEDIES FOR VIOLATIONS**
- **PROVIDING ADVISORY OPINIONS ABOUT THE HATCH ACT, AND ENFORCING (THROUGH INVESTIGATION AND PROSECUTION) THE ACT'S RESTRICTIONS ON POLITICAL ACTIVITY**
- **OPERATING AN INDEPENDENT AND SECURE CHANNEL FOR DISCLOSURES OF WRONGDOING IN FEDERAL AGENCIES**

OSC'S MISSION (cont'd)



ALSO CARRIED OUT BY:

- **PROTECTING REEMPLOYMENT AND ANTIDISCRIMINATION RIGHTS OF VETERANS UNDER USERRA**
- **PROMOTING GREATER UNDERSTANDING – THROUGH OUTREACH – OF RIGHTS AND RESPONSIBILITIES OF FEDERAL EMPLOYEES, UNDER LAWS AND REGULATIONS ENFORCED BY OSC**

FEDERAL HATCH ACT

5 U.S.C. § § 7321-7326



The Hatch Act:

Who is covered?

FEDERAL HATCH ACT

5 U.S.C. § § 7321-7326



TWO CATEGORIES OF EMPLOYEES

**EMPLOYEES OF
INTELLIGENCE- AND
ENFORCEMENT-TYPE
AGENCIES**

(MORE RESTRICTED)

- **EXCEPT PAS**

ALL OTHERS

(LESS RESTRICTED)

- **GS**
- **WG**
- **PAS**
- **SCHEDULE C**
- **NONCAREER SES**

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B



The Hatch Act:

What may less restricted employees do?

FEDERAL HATCH ACT DOs

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART B



GENERALLY, LESS RESTRICTED EMPLOYEES MAY—

1. ENGAGE IN PARTISAN POLITICAL CAMPAIGNING

(E.G., DISTRIBUTE CAMPAIGN LITERATURE, ORGANIZE CAMPAIGN EVENTS, SPEAK ON BEHALF OF A CANDIDATE, ETC.)

2. ENGAGE IN PARTISAN POLITICAL MANAGEMENT

(E.G., HOLD PARTY OFFICE, ORGANIZE PARTY EVENTS, SERVE ON A PARTY COMMITTEE, ETC.)

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



The Hatch Act:

What prohibitions apply to all employees?

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



COVERED EMPLOYEES MAY NOT—

1. USE OFFICIAL AUTHORITY OR INFLUENCE TO INTERFERE WITH AN ELECTION

- USE OF OFFICIAL TITLE (GENERIC TITLE, OR “THE HONORABLE”)
- COERCE SUBORDINATES
- SOLICIT THE UNCOMPENSATED VOLUNTEER SERVICES OF SUBORDINATES
- PROVIDE NAMES/ADDRESSES OF EMPLOYEES TO CANDIDATE/CAMPAIGN

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



2. SOLICIT OR DISCOURAGE POLITICAL ACTIVITY OF ANYONE WITH BUSINESS BEFORE THEIR AGENCY

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



3. SOLICIT OR RECEIVE POLITICAL CONTRIBUTIONS

- SOLICITATION LETTERS
- FUNDRAISERS
- PHONE BANKS

* A COVERED EMPLOYEE MAY HOST A MEET AND GREET, OR SPEAK AT A FUNDRAISER

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART C



4. BE CANDIDATES FOR PUBLIC OFFICE IN PARTISAN ELECTIONS

- NONPARTISAN ELECTIONS
- DESIGNATED LOCALITIES (*see slides 33,34 & 35*)
- WRITE-IN CANDIDACY
- PARTY OFFICE (e.g., PRECINCT COMMITTEE PERSON)

CANDIDACY

5 U.S.C. § 7323



WHEN DOES IT BEGIN?

WHEN AN INDIVIDUAL —

- **BEGINS TO COLLECT SIGNATURES FOR NOMINATING PETITIONS**
- **BEGINS TO FUNDRAISE**
- **MAKES AN ANNOUNCEMENT TO THE PRESS**
- **FILES NOMINATING PETITIONS**
- **PUTS A CAMPAIGN COMMITTEE TOGETHER**

NONPARTISAN ELECTIONS / CANDIDACIES

5 U.S.C. § 7323



- **BEWARE OF NONPARTISAN ELECTIONS / CANDIDACIES**
- **NONPARTISAN CAN TRANSFORM TO PARTISAN WHEN EMPLOYEE / CANDIDATE —**
 - ◆ ***SEEKS AND RECEIVES ENDORSEMENT OF POLITICAL PARTY***
 - ◆ ***ADVERTISES ENDORSEMENT OF POLITICAL PARTY***
 - ◆ ***USES POLITICAL PARTY RESOURCES***
 - ◆ ***ANNOUNCES HE / SHE IS A POLITICAL PARTY CANDIDATE***
- **KEY: THERE IS EVIDENCE SHOWING THAT PARTISAN POLITICS ACTUALLY ENTERED A CANDIDATE'S CAMPAIGN**

FEDERAL HATCH ACT DON'Ts

5 U.S.C. § 7324; 5 C.F.R. PART 734, SUBPART C



5. ENGAGE IN POLITICAL ACTIVITY WHILE —

- ON DUTY
- IN A GOVERNMENT OFFICE
- WEARING AN OFFICIAL UNIFORM
- USING A GOVERNMENT VEHICLE

* EXCEPTION: SOME PAS / EOP EMPLOYEES

FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



POLITICAL ACTIVITY MEANS:

AN ACTIVITY DIRECTED TOWARD THE SUCCESS OR FAILURE
OF A —

- POLITICAL PARTY
- CANDIDATE FOR PARTISAN POLITICAL OFFICE, OR
- PARTISAN POLITICAL GROUP

FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



EXAMPLES OF PROHIBITED POLITICAL ACTIVITY:

- **BUTTONS, POSTERS, COFFEE MUGS, ETC. IN THE WORKPLACE WITH THE FOLLOWING MESSAGES:**

“VOTE FOR _____”

“I SUPPORT _____”

“REGISTER FOR _____”

- **E-MAIL**
- **BUMPER STICKERS ON GOVERNMENT CARS**

FEDERAL HATCH ACT

5 U.S.C. § 7324; 5 C.F.R. PART 734.101



NOT PROHIBITED POLITICAL ACTIVITY – *EXAMPLES:*

- NRA
- “CRIME CONTROL, NOT GUN CONTROL”
- “RIGHT TO LIFE”
- “PRO-CHOICE”
- “I SUPPORT THE WAR”
- “PEACE, NOT WAR”

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART E



The Hatch Act:

The PAS/EOP exception

FEDERAL HATCH ACT: EOP / PAS COVERAGE

5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



Exception applies to:

THOSE WHOSE DUTIES AND RESPONSIBILITIES CONTINUE OUTSIDE
NORMAL DUTY HOURS AND WHILE AWAY FROM THE NORMAL DUTY
POST, AND ARE —

1. PAID FROM AN APPROPRIATION FOR THE EOP, OR
2. APPOINTED BY THE PRESIDENT AND SENATE-CONFIRMED (PAS),

WHO —

A) OCCUPY POSITIONS LOCATED IN THE U.S., AND

B) DETERMINE POLICIES TO BE PURSUED IN —

- RELATIONS WITH FOREIGN POWERS, OR
- NATIONWIDE ADMINISTRATION OF FEDERAL LAWS

**FEDERAL HATCH ACT:
EOP / PAS COVERAGE *(cont'd)***
5 U.S.C. § 7324(b); 5 C.F.R. PART 734, SUBPART E



**SUCH PAS AND EOP EMPLOYEES MAY ENGAGE IN POLITICAL
ACTIVITY WHILE —**

- ***ON DUTY***
- ***IN A GOVERNMENT ROOM OR BUILDING***
- ***WEARING A UNIFORM OR OFFICIAL INSIGNIA***
- ***USING A GOVERNMENT VEHICLE***

**IF COSTS ASSOCIATED WITH POLITICAL ACTIVITY ARE NOT PAID FOR
BY MONEY DERIVED FROM THE U.S. TREASURY**

FEDERAL HATCH ACT

5 U.S.C. § § 7321-7326



The Hatch Act:

Who is a further restricted employee?

FEDERAL HATCH ACT: RESTRICTED AGENCIES

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- **CRIMINAL DIVISION (DOJ)**
- **CENTRAL INTELLIGENCE AGENCY**
- **DEFENSE INTELLIGENCE AGENCY**
- **FEDERAL BUREAU OF INVESTIGATION**
- **FEDERAL ELECTIONS COMMISSION**
- **ELECTION ASSISTANCE COMMISSION**
- **MERIT SYSTEMS PROTECTION BOARD**
- **NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY**

FEDERAL HATCH ACT: RESTRICTED AGENCIES

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- **NATIONAL SECURITY AGENCY**
- **NATIONAL SECURITY COUNCIL**
- **OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE**
- **OFFICE OF CRIMINAL INVESTIGATION (IRS)**
- **OFFICE OF INVESTIGATIVE PROGRAMS (CUSTOMS)**
- **OFFICE OF LAW ENFORCEMENT (BATF)**
- **OFFICE OF SPECIAL COUNSEL**
- **SECRET SERVICE**

FEDERAL HATCH ACT: RESTRICTED POSITIONS

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



- **CAREER SES**
- **ADMINISTRATIVE LAW JUDGES**
- **MEMBERS OF CONTRACTS APPEALS BOARDS**
- **ADMINISTRATIVE APPEALS JUDGES**

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



The Hatch Act:

What additional prohibitions apply to further restricted employees?

**FEDERAL HATCH ACT DON'Ts:
FURTHER RESTRICTED EMPLOYEES**
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



**FURTHER RESTRICTED EMPLOYEES MAY NOT ENGAGE IN PARTISAN
POLITICAL CAMPAIGNING AND POLITICAL MANAGEMENT**

EXAMPLES:

- **MAKE CAMPAIGN SPEECHES**
- **DISTRIBUTE CAMPAIGN LITERATURE**
- **ORGANIZE A POLITICAL RALLY, MEETING OR FUNDRAISER**
- **HOLD POLITICAL PARTY OFFICE OR BE A PARTY DELEGATE**
- **PARTICIPATE IN PARTISAN VOTER REGISTRATION DRIVES**
- **CIRCULATE NOMINATING PETITIONS**

**KEY: NO ACTIVITY IN CONCERT WITH A POLITICAL PARTY
OR CANDIDATE**

FEDERAL HATCH ACT

5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



The Hatch Act:

What may further restricted employees do?

**FEDERAL HATCH ACT DOs:
FURTHER RESTRICTED EMPLOYEES**
5 U.S.C. § 7323; 5 C.F.R. PART 734, SUBPART D



FURTHER RESTRICTED EMPLOYEES MAY—

- **JOIN POLITICAL CLUBS OR PARTIES**
- **EXPRESS OPINIONS ABOUT CANDIDATES AND ISSUES**
- **SIGN NOMINATING PETITIONS**
- **ATTEND POLITICAL RALLIES AND CONVENTIONS**
- **PARTICIPATE IN NONPARTISAN ACTIVITIES**

FEDERAL HATCH ACT

5 U.S.C. § 7325; 5 C.F.R. PART 733



The Hatch Act:

Rules that apply to designated localities

DESIGNATED LOCALITIES

5 U.S.C. § 7325; 5 C.F.R. Part 733



LESS RESTRICTED EMPLOYEES WHO RESIDE IN DESIGNATED LOCALITIES MAY—

- RUN AS INDEPENDENT CANDIDATES IN PARTISAN ELECTIONS FOR LOCAL OFFICE IN THAT DESIGNATED LOCALITY
- SOLICIT, ACCEPT OR RECEIVE A POLITICAL CONTRIBUTION ON BEHALF OF AN INDEPENDENT CANDIDATE IN A PARTISAN ELECTION FOR LOCAL OFFICE (EXCEPT MAY NOT SOLICIT A FEDERAL EMPLOYEE)
- ACCEPT OR RECEIVE A POLITICAL CONTRIBUTION FOR A PARTISAN CANDIDATE FOR LOCAL OFFICE (EXCEPT FROM A SUBORDINATE)
- SOLICIT, ACCEPT OR RECEIVE UNCOMPENSATED VOLUNTEER SERVICES IN THE PRECEDING THREE INSTANCES (EXCEPT FROM A SUBORDINATE)

DESIGNATED LOCALITIES

5 U.S.C. § 7325; 5 C.F.R. Part 733



FURTHER RESTRICTED EMPLOYEES WHO RESIDE IN DESIGNATED LOCALITIES MAY –

- RUN AS INDEPENDENT CANDIDATES IN PARTISAN ELECTIONS FOR LOCAL OFFICE IN THAT DESIGNATED LOCALITY
- SOLICIT, ACCEPT OR RECEIVE A POLITICAL CONTRIBUTION ON BEHALF OF AN INDEPENDENT CANDIDATE IN A PARTISAN ELECTION FOR LOCAL OFFICE (EXCEPT MAY NOT SOLICIT A FEDERAL EMPLOYEE
- ACCEPT OR RECEIVE A POLITICAL CONTRIBUTION FROM A SUBORDINATE)
- SOLICIT, ACCEPT OR RECEIVE UNCOMPENSATED VOLUNTEER SERVICES IN THE PRECEDING TWO INSTANCES (EXCEPT FROM A SUBORDINATE)

FEDERAL HATCH ACT

5 U.S.C. §§ 1215 and 7326



The Hatch Act:

OSC's enforcement role and penalties for violating the Act

DISCIPLINARY ACTION

5 U.S.C. § 1215



MAY BE SOUGHT BY OSC FROM —

- **THE MERIT SYSTEMS PROTECTION BOARD**
- **THE PRESIDENT**
(FOR MOST PRESIDENTIAL APPOINTEES)

DISCIPLINARY ACTION / PENALTIES

5 U.S.C. § 7326



MERIT SYSTEMS PROTECTION BOARD MAY ORDER EMPLOYEE'S —

- REMOVAL

OR

- SUSPENSION (30-DAY MINIMUM)

HATCH ACT INFORMATION / ADVICE

5 U.S.C. § 1212 (f)



EMPLOYEES MAY:

- OBTAIN ANSWERS TO SPECIFIC QUESTIONS ABOUT POLITICAL ACTIVITY BY CALLING OSC, AT —

800-85-HATCH OR 202-254-3650

- OBTAIN WRITTEN ADVISORY OPINIONS ABOUT THE HATCH ACT BY CONTACTING OSC —

BY MAIL, AT: U.S. OFFICE OF SPECIAL COUNSEL
1730 M STREET, NW (SUITE 218)
WASHINGTON, DC 20036-4505
ATTN: HATCH ACT UNIT

BY E-MAIL, AT: HATCHACT@OSC.GOV

BY FAX, AT: (202) 254-3700

OSC WEB SITE

(<http://www.osc.gov>)



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Thursday, 25 May 2006 Thursday, 25 May 2006



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Prohibited Personnel Practices



Whistleblower Disclosures



Political Activity (Hatch Act)



Uniformed Services Employment and Reemployment Rights Act (USERRA)



HEADLINES

- LATEST OSC PRESS RELEASE:** [OSC: Prisons Exposed Staff and Inmates to Hazardous Materials Federal Bureau of Prisons Has Failed to Address Concerns in Report](#)
- FORMS UPDATED:** [Revised Complaint Form \(OSC-11\) and Disclosure Form \(OSC-12\) Now Available](#)
- NEW SECTION:** [E-Library - View OSC Publications, Annual Reports, Speeches, Testimony, Legal Briefs, Policies, Procedures and other significant documents](#)

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